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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CARL J. TEIXEIRA,
5155 W. Tropicana Ave., Apt 2164
Las Vegas, NV 89103,

Plaintiff,

UNITED STATES OF AMERICA,

Defendant

Case No.: 2:11-cv-02022-JCM-RJJ

Count #1: Federal Tort Claims Act
(28 U.S.C. §§ 2671-80)

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Defendant

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10. *Journal of the American Statistical Association*, 1952, 47, 331-338.

VERIFIED AMENDED COMPLAINT

(Federal Tort Claims Act; Negligence)

JURISDICTION

1. This is a civil action brought pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2671.

2. This Court has jurisdiction under 28 U.S.C. §§ 1346(b)(1) and 1331.

VENUE

3. Venue lies in this jurisdiction pursuant to 28 U.S.C. § 1402, which provides FTCA
claims "may be prosecuted only in the judicial district where the plaintiff resides or wherein the
act or omission complained of occurred." The negligent act or omission occurred at Nellis Air
Force Base, Nevada. Venue is also proper in this jurisdiction pursuant to 28 U.S.C. § 1391(b)(2),
which provides that civil actions may be brought in "a judicial district in which a substantial part
of the events or omissions giving rise to the claim occurred, or a substantial part of property that
is the subject of the action is situated[.]" The unreasonable act occurred at Nellis Air Force Base,
Nevada.

THE PARTIES

4. Plaintiff, Carl. J. Teixeira, is a resident of Nevada who resides at the address in the caption. At all relevant times pertinent to this Amended Complaint, Mr. Teixeira has resided at this address.

17 5. Defendant United States of America is a Sovereign that has consented to be sued
18 for negligent acts and/or omissions made by its employees, agents, and/or servants within the
19 course and scope of their employment with the Defendant under the FTCA, 28 U.S.C. §§ 1346(b),
20 1402(b), 2401(b), 2671–80.

STATUTE OF LIMITATIONS AND EXHAUSTION OF ADMINISTRATIVE CLAIM

6. The negligence giving rise to this FTCA claim against the United States Government occurred on May 28, 2008.

7. Thereafter, Mr. Teixeira timely filed a claim with the United States Air Force within the two-year statute of limitations applicable to such claims with the agency. *See* 28 U.S.C. § 2401(b).

8. On June 30, 2011, the Air Force denied the claim, advising Mr. Teixeira that he had six months to file a complaint under federal law.

9. Having now exhausted Mr. Teixeira's administrative remedy, the FTCA claim in Plaintiff's initial complaint was timely and properly filed. *See* 28 U.S.C. §§ 2401(b), 2675. Because amended pleadings relate back to the date of the original pleading, Plaintiff's Amended Verified Complaint is timely filed. *See* Fed. R. Civ. P. 15(c).

STATEMENT OF FACTS

9 10. Carl J. Teixeira is a 60 year-old disabled military veteran who suffers from spinal
10 disabilities, depression and other disabilities as a result of his service to the United States.

11. On May 28, 2008, at approximately 2:30 p.m., Mr. Teixeira arrived on his motorcycle at Nellis Air Force Base ("AFB"), Nevada to go to the Emergency Room ("ER") at the base hospital. Gate guards Bryce R. Cresto and Randy S. Starr met Mr. Teixeira upon his arrival at the AFB gate. Mr. Starr denied entry to Mr. Teixeira for failure to wear proper protective equipment ("PPE"), under the base's own standards, while riding a motorcycle. Mr. Starr asked Mr. Teixeira to leave the premises after Mr. Teixeira disputed the PPE policy.

12. After speaking to Mr. Teixeira about the PPE policy and asking him to leave, Mr. Starr called security and, thereafter, Sgt. Theopolis W. Toliver, Sgt. Eric D. McPherson, Sgt. Scott H. Minchak, and Sgt. Dondrel M. Scott to the scene. Before the officers arrived, Mr. Starr untruthfully told them that Mr. Teixeira was belligerent and uncooperative during their conversation at the gate.

13. When Sgt. Toliver, who had with him a Military Working Dog ("MWD"), Sgt. McPherson, Sgt. Minchak, and Sgt. Scott arrived, Mr. Teixeira told them that he was a 100% disabled veteran and needed to access the base hospital. The officers still denied entry to Mr. Teixeira because of the PPE policy. Mr. Teixeira asked to speak with the Base Commander and

1 was directed to the Visitors Center ("VCC"). Mr. Cresto, Sgt. Toliver, Sgt. McPherson, Sgt.
2 Minchak, and Sgt. Scott led Mr. Teixeira into the office at the VCC.

3 14. Mr. Cresto used his cell phone to call the head of security and reached Sgt. Steven
4 L. Eckmeyer. Mr. Cresto gave the phone to Mr. Teixeira and Sgt. Eckmeyer explained the AFB's
5 motorcycle PPE policy. After the conversation with Mr. Teixeira ended, Sgt. Eckmeyer
6 instructed Sgt. McPherson to detain Mr. Teixeira.
7

8 15. Mr. Teixeira asked to speak to the Base Commander. Mr. Cresto used his cell
9 phone to call the Base Commander's office and gave the phone to Mr. Teixeira. Mr. Teixeira
10 spoke to Ms. Janet Duenna on the phone about the PPE policy. Ms. Duenna asked to speak with
11 Sgt. Toliver, who twice refused to speak with Ms. Duenna.
12

13 16. After Sgt. Toliver refused to speak with Ms. Duenna, Sgt. McPherson ordered Mr.
14 Teixeira to leave the office and Mr. Teixeira attempted to comply. As Mr. Teixeira began to
15 leave, Sgt. McPherson detained Mr. Teixeira by slamming him into a wall or desk, which caused
16 Sgt. Toliver to release the MWD to attack Mr. Teixeira. Mr. Cresto and Sgt. McPherson then
17 threw Mr. Teixeira to the ground as the MWD attacked Mr. Teixeira.
18

19 17. The MWD continued its brutal attack on Mr. Teixeira while Mr. Teixeira was on
20 the ground. Mr. Teixeira repeatedly pleaded with the officers to stop the MWD attack but they
21 refused. The MWD continued to bite Mr. Teixeira relentlessly on his arms, legs, and body,
22 despite Mr. Teixeira's compliance with Sgt. Toliver's orders to lay motionless. The officers who
23 were present did not restrain or attempt to restrain the MWD, allowing the attack to continue.
24

25 18. After the MWD had bitten Mr. Teixeira several times, Sgt. McPherson threw Mr.
26 Teixeira against a wall or desk and handcuffed him. Then, the officers led Mr. Teixeira outside
27 and a medical unit arrived sometime thereafter. Sgt. McPherson forcefully threw Mr. Teixeira,
28 who remained handcuffed, against a parked truck three times and conducted a search of Mr.

1 Teixeira's body before forcing Mr. Teixeira onto his knees. Then, Sgt. McPherson pushed Mr.
2 Teixeira onto his stomach.

3 19. After Sgt. McPherson completed the search of Mr. Teixeira, the medical unit took
4 Mr. Teixeira to the hospital ER while still handcuffed. TSgt. Sultan arrived at the hospital, where
5 Mr. Teixeira asked TSgt. Sultan for permission to urinate. TSgt. Sultan allowed Mr. Teixeira to
6 use the restroom and followed him there, but refused to allow Mr. Teixeira to close the restroom
7 door while urinating. As a result, Mr. Teixeira was forced to use the restroom in open view to the
8 public.

9 10 20. Mr. Teixeira had his wounds attended to at the ER. As a result of the MWD
11 attack, Mr. Teixeira suffered multiple bite wounds to his body, which caused permanent physical
12 disfigurement, including numbness and weakness in his left arm, hand, and leg, and right leg and
13 thigh. Mr. Teixeira also suffered mental distress, including nightmares, sleeplessness, anxiety,
14 and severe depression. In addition, the attack severely aggravated Mr. Teixeira's prior mental
15 condition.

16 17 21. After Mr. Teixeira had his wounds attended to at the ER, he came back to his
18 parked motorcycle and discovered that two of his tool bags, which were attached to his
19 motorcycle, had been tampered with and searched. Mr. Teixeira then left the AFB.

20 **COUNT #1: NEGLIGENCE**

21 22 22. The averments of the preceding paragraphs are incorporated by reference as if
23 fully set forth herein.

24 23. The Defendant United States owed Mr. Teixeira the duty of care to take
25 precautions against creating unreasonable risks of injury and to refrain from willfully injuring Mr.
26 Teixeira. The Defendant United States owed Mr. Teixeira the duty of care to restrain the MWD
27 from attacking Mr. Teixeira, to cease immediately the MWD's attack on Mr. Teixeira once it
28

1 began, and to refrain from causing further and unnecessary injury to Mr. Teixeira.

2 24. The Defendant United States breached this standard of care in its treatment of Mr.
3 Teixeira at Nellis Air Force Base, Nevada. Particularly, the Defendant United States breached the
4 standard of care by forcefully detaining Mr. Teixeira with the use of the MWD, willfully refusing
5 to cease the MWD's attack, and using physical restraint against him. A reasonable standard of
6 care required the Defendant United States to refrain from using such force on Mr. Teixeira, to
7 cease the MWD's attack on Mr. Teixeira, and to refrain from inflicting further injury on Mr.
8 Teixeira.

9 25. The Defendant United States' actions are the actual and proximate causes of Mr.
10 Teixeira's physical and mental suffering.

11 26. Mr. Teixeira suffered permanent physical injuries and sustained mental distress as
12 a result of the events described in the preceding paragraphs.

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WHEREFORE, the Plaintiff prays that the Court:

- A. Enter judgment against the Defendant United States of America in the amount of \$1,500,000.00;
- B. Award Plaintiff attorney's fees and costs expended in pursuit of his claim; and
- C. Grant any other relief that this Court deems just and proper.

Respectfully submitted,

/s/ David P. Sheldon

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Attorneys for Plaintiff

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2 VERIFICATION
3

4 I, Carl J. Teixeira, declare under penalty of perjury under the laws of the United States of
5 America that I have read the foregoing Verified Amended Complaint, and that the information
6 stated therein as factual is true, and those factual matters are stated upon information and belief
7 are believed to be true.
8

9
10 Executed on this 25th day of April, 2012.
11

12 
13 Carl J. Teixeira
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2 **PROOF OF SERVICE**
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4 I, David P. Sheldon, certify that the following individual was served with the foregoing on
5 this 26th day of April, 2012, by electronically filing with the Court's ECF system which will
6 electronically notify the following:

7
8 JUSTIN E. PINGEL
9 Assistant United States Attorney
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